



THE ASSISTANT SECRETARY OF THE NAVY
(Research, Development and Acquisition)
WASHINGTON, D.C. 20350-1000

AUG 09 2006

MEMORANDUM FOR DISTRIBUTION

SUBJECT: New Guidance for Statute Prohibiting Modifications of a Weapons Platform Within Five Years of Disposal; SECNAV Waivers and Statutory Exceptions

The attachment, "Statute Prohibiting Modifications of a Weapons Platform Within Five Years of Disposal; SECNAV Waivers and Statutory Exceptions", provides guidance and uniform procedures to implement Section 2244a of Title 10 United States Code.

Should you have additional questions, my point of contact is Mr. Mark Deskins at 703-697-3781.

A handwritten signature in black ink, reading "Delores M. Etter".

Delores M. Etter

Attachment:
As stated

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ASN(RD&A) GUIDANCE

Statute Prohibiting Modifications of a Weapons Platform Within Five Years of Disposal; SECNAV Waivers and Statutory Exceptions

Purpose.

To disseminate information about recent amendments to the statutory prohibition against modifications of a weapons platform within five years of platform disposal; and to provide guidance and uniform procedures for the consistent implementation of the amended statute throughout the Department of the Navy. ASN(RD&A) is the Secretary of the Navy's delegate for determinations and approvals.

Background.

History of Statute. Section 8053 of the FY 98 DoD Appropriations Act (Section 8053) prohibited the use of appropriations to modify any weapon platform within five years of the planned disposal of that platform. The only modifications not covered by this statute were safety modifications. Covered modifications could proceed only if a Secretariat waiver of the restriction was issued for the modification based on the interests of national security. Section 8053 was first enacted in FY 91 as an annual appropriations act provision, and then became permanent law in FY 98. OASN(RD&A) prepared a legislative proposal for the FY 06 DoD Omnibus Authorization bill that would exclude modifications valued at \$100,000 or below; this proposal was approved by DoD, OMB and forwarded to Congress. Subsequently, Congress executed statutory relief in a form broader than requested by the Navy via Section 372 of the National Defense Authorization Act for Fiscal Year 2006. Section 372 excludes from the statutory restriction not only those modifications less than \$100,000 in cost, but also those that involve reusable items (removed when the weapons platform is retired and installed on another platform) when the total cost of the modification (including removal, refurbishment and installation on another platform), as determined by the Secretary, is less than \$1 million. Section 372 also codifies the statute at Section 2244a of Title 10, United States Code (Section 2244a).

Amended Statute. Section 2244a prohibits "modification of an aircraft, weapon, vessel, or other item of equipment that the Secretary plans to retire or otherwise dispose of within 5 years after the date on which the modification, if carried out, would be completed." Section 2244a provides that the following modifications are "exceptions" that are not covered by the Section 2244a prohibition: safety modifications; modifications that cost less than \$100,000; and modifications that, as determined by the Secretary, cost less than \$1,000,000 for reusable items that, upon the retirement or disposal of the platform will be removed, refurbished, and installed on another platform. Section 2244a allows the Secretary to waive the statutory prohibition for any modification covered by the statute if the Secretary determines that carrying out the modification is in the national security interest of the United States. Whenever the Secretary issues such a waiver, the Secretary shall notify the congressional defense committees in writing.

Implementation Guidance and Procedures.

Safety Modifications. Section 2244a provides that a safety modification is an exception that is not covered by Section 2244a. No Secretarial determination is required for these modifications. The requiring command shall create a Memorandum For the Record (MFR) documenting the following minimum information.

- The name and hull number of the ship/aircraft involved.
- The title/ name of the alteration, and description of the work.
- The Fiscal Year and type of appropriations to be used (Other Procurement Navy, Operations and Maintenance, Navy, Research Development Testing and Evaluation)
- A description of the safety features of the modification.
- The planned date of disposal or decommissioning of the platform.

The MFR shall be reviewed by legal counsel and approved by an official within the chain of command at the SES/Flag level. A copy of the approved MFR shall be forwarded to ASN(RD&A)/DASN(Ships)/DASN(Air) and the CNO's designee.

Modifications Below the \$100,000 Threshold. Section 2244a provides that a modification that costs less than \$100,000 is an exception that is not covered by Section 2244a. No Secretarial determination is required for these modifications. The requiring command shall create an MFR documenting the following minimum information.

- The total cost of the modification. The total cost of the modification is calculated by adding the cost of equipment procurement, installation, and removal. Identify the cost of each of these items.
- The name and hull number of the ship/aircraft involved.
- The title/name of the alteration, and description of the work.
- The Fiscal Year and type of appropriations to be used (Other Procurement Navy, Operations and Maintenance, Navy, Research Development Testing and Evaluation).
- The planned date of disposal or decommissioning of the platform.
- Source of funds (Resource Sponsor).
- Identify the coordination POCs for each of the following: requiring command, funding authority, and funding source. Include POC name, e-mail address, phone, office code.

The MFR shall be reviewed by legal counsel and approved by an official within the chain of command at the SES/Flag level. A copy of the approved MFR shall be forwarded to ASN(RD&A)/DASN(Ships)/DASN(Air) and the CNO's designee.

Modifications of Reusable Items Below the \$1 Million Threshold. Section 2244a requires a Secretarial determination that a modification meets the qualifications for the less-than-\$1 million threshold exception. To obtain the required Secretarial determination, the following information must be documented and forwarded to ASN(RD&A)/DASN(Ships)/DASN(Air):

- The total cost of the modification. The total cost of the modification is calculated by adding the cost of equipment procurement, installation, removal, and refurbishment. Identify the cost of each of these items.
- Document and certify that the equipment to be installed on the platform is reusable, and will be removed, refurbished and installed on another platform. A Navy official (Flag/SES level) at the requiring command shall sign a certification that "the reusable items of value will, upon retirement or disposal of the platform, be removed from the platform and be refurbished and installed on another platform." Describe procedures to be followed to ensure that these three steps will be executed in the future, including what other possible platforms would receive the equipment and the Navy office responsible for execution of the equipment removal, refurbishment and installation.
- The name and hull number of the ship/aircraft involved.
- The title/name of the alteration, and description of the work.
- The Fiscal Year and type of appropriations to be used (Other Procurement Navy, Operations and Maintenance, Navy, Research Development Testing and Evaluation).
- Source of funds (Resource Sponsor).
- The coordination POCs for each of the following: originating command, funding authority, and funding source. Include POC name, e-mail address, phone, office code.

Secretarial Waivers. Modifications that are covered by Section 2244a can proceed only if a Secretariat waiver of the restriction is issued in advance based on the interests of national security. Waiver procedures and documentation requirements essentially have not changed. Requests for a waiver must be forwarded to ASN(RD&A)/DASN(Ships)/DASN(Air) for approval, with the following minimum information.

- The total cost of the modification. The total cost is calculated by adding the cost of equipment procurement, installation, and removal. Identify the cost of each of these items.
- The name and hull number of the ship/aircraft involved.
- The title/name of the alteration, and description of the work.

- Identify whether the equipment is separable and useable after disposal of the platform.
- Provide a detailed description of the need for, and purpose of, the modifications.
- Identify the impact to the Navy if the modifications are not performed. This information is relevant to support the Secretarial certification that the modification is in the best interests of national security.
- Certify that the modification is mission critical and that there is no alternative, and otherwise meets the CNO policy requirements of CNO MSG DTG 300233 Jun 04.
- The Fiscal Year and type of appropriations to be used (Other Procurement Navy, Operations and Maintenance, Navy, Research Development Testing and Evaluation).
- The planned date of disposal or decommissioning of the platform.
- Source of funds (Resource Sponsor).
- The coordination POCs for each of the following: originating command, funding authority, and funding source. Include POC name, e-mail address, phone, office code.